IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 553 of 2005**

Between:

M/s Shivani Engineering Industries, rep. by its Managing Partner,
Sri K. Muralidhara Rao, B-2, B-2A IDA, Uppal, Hyderabad - 500 039.

**..... PETITIONER**

AND

1 The Andhra Pradesh State Road Transport Corporation (APSRTC), rep. by its Managing Director & Vice Chairman, Hyderabad.
2 The Chief Mechanical Engineer ( C&B), A.P. State Road Transport Corporation, Head Office Building, Near RTC Cross Roads, Musheerabad, Hyderabad - 500 020.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ , Order or direction more particularly one in the nature of Writ of mandamus call for the records relating to in connection with the Tender Notice No. 1/2004 dated 20-2-2004 and declare the action of the respondents in calling for negotiations from various bidders deliberately excluding the petitioner and attempting to award works under various work orders as illegal, discriminatory, violative of Article 14, arbitrary and contrary to the law laid down by the Apex Court.

**Counsel for the Petitioner: MR.T.JAGDISH**

**Counsel for the Respondents: MR.V.T.M.PRASAD (S.C.FOR APSRTC)**

**The Court, at the admission stage, made the following :**

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**ORAL ORDER**:

This writ petition is filed seeking a Mandamus to declare the action of the respondents in calling various bidders for negotiations in connection with the Tender Notice No.1 of 2004, dated 20.2.2004 deliberately excluding the petitioner and attempting to award works under various work orders as illegal and arbitrary.

The brief facts that are necessary for the disposal of the writ petition may be delineated as follows:

The petitioner is one of the regular bus body builders for the respondents-Corporation for the last 30 years. The Tender Notification is specifically issued calling for bids for fabrication of Luxury and Express bus bodies. However, there is non-application of mind manifested in the very tender conditions finding an incorporation therein the need to “have requisite infrastructure facilities to fabricate Hi-Tech. buses i.e. 7 tank hot phosphating, stretch paneling jig, Paint booth, MIG welding etc. are only entitled to quote against the tender”. The said condition is incorporated without application of mind, and it has no nexus with the object sought to be achieved. The attitude displayed by the respondents in the process of calling for tenders is

impermissible. The petitioner is discriminated blatantly while all the remaining bidders who presented the bids opened in the presence of the petitioner on 22.3.2004 have been intimated and are called upon to negotiate and scale down the price line. The petitioner is neither informed nor intimated either of rejection or of any defect in the bid document. The petitioner is neither blacklisted nor issued with show cause notice. Such discrimination is impermissible. The action of the respondents culminated in creation of a coterie and calling for secret negotiations ending up in assigning some kind of job to various parties. Thereupon, the petitioner addressed a letter, dated 27.8.2004 setting out his readiness and preparedness for building at least 15 Luxury bus bodies per month. Hence, the writ petition has been filed.

The respondents filed a counter affidavit stating that 56 firms situated in the State of Andhra Pradesh and 15 firms situated outside the State participated in the Tender including the petitioner. Since large number of bidders participated in the tender, the negotiation committee decided to call the first 15 lowest quoted firms for negotiations. Therefore, the petitioner was not called for negotiation. Apart from the petitioner, 42 local and 14 outside tenderers are also not called for negotiations. The respondents would like to have more number of fabricators to participate in the tender so as to obtain a competitive rate. There is no secrecy in the proceedings of the negotiations. Against supply order, dated 7.12.2000 for 16 chasis in phased manner, the petitioner delivered only 10 and failed to fabricate and deliver 6 buses to the Corporation. The petitioner is a defaulter for the loans secured from the Bank. The petitioner has very bad track record both financially and also in work order commitments. Hence, the respondents pray to dismiss the petition.

A detailed reply affidavit has been filed by the petitioner stating that choosing the first 15 lowest quoted firms for negotiations is nothing but an arbitrary exercise of power, and that there shall be a nexus with the object sought to be achieved if the number of buses required to be constructed or fabricated in large numbers, and that the incorporated condition No.1 of the Tender Notification No.1 of

2004 is *per se* without any nexus with the object that is sought to be achieved.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents and perused the material on record.

The learned counsel for the petitioner has contended that in pursuance of the Tender Notification, if the lowest quoted tenderer is accepted, then, the petitioner could not have any grievance, but the tender committee, resolved to call only 15 tenderers for negotiations, which is a clear discrimination on the part of the respondents. There was no fair play on the part of the respondents-Corporation in calling only a particular number of tenderers and hence, it is contrary and discriminatory. He has further contended that the negotiations in pursuance of the Tender Notification are not contemplated. There is no indication in the tender conditions that the tenders will be short-listed. Therefore, the respondents ought to have called all the tenderers who have applied in pursuance of the Tender Notification, for negotiations.

On the other hand, the learned counsel for the respondents has contended that the lowest tenderer of the 15 persons was called for negotiations and there is no discrimination or arbitrariness on the part of the respondents inasmuch as they have not picked up any tenderer among the persons who applied for the bid. On earlier occasion, the petitioner did not fulfil the commitment. Therefore, there is no discrimination on the part of the respondents in not calling the petitioner for the tender. Therefore, he prays to dismiss the writ petition.

The respondents-Corporation issued Tender Notification, dated 20.2.2004 calling for tenders for fabrication of Luxury and Express bus bodies. In pursuance of the notification, 56 firms situated in the State of Andhra Pradesh and 15 firms situated outside the State including the petitioner submitted their tender applications, but the Negotiation Committee restricted the number of calling lowest tenderers for negotiations to 15. The grievance of the petitioner is that

choosing a particular number is discriminatory. If the lowest tender of any firm was accepted by the respondents, then, there would not be any case for the petitioner, but the respondents-Corporation determined to call certain number of firms for negotiations. The respondents ought to have called all the firms who applied in pursuance of the notification.

The law is well settled that the scope of judicial review would apply to the exercise of contractual powers by Government bodies, in order to prevent arbitrariness or favouritism. Unless the Court is satisfied that there is a substantial amount of interest or the transaction entered into is *mala fide*, the Court should not intervene under Article 226 of the Constitution of India in matters of Government Contracts. The scope of judicial review as far as tender/contract matters are concerned, is very limited in view of the decision reported in ***TATA CELLULAR Vs. UNIION OF INDIA*** wherein the following principles have been laid down:

1. *The modern trend points to judicial restraint in administrative action.*

2. *The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*

3. *The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

4. *The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

5. *The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant*

*for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*

6. *Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*

Therefore, though the decision of the respondents is not amenable to the judicial review in such matters, the Court can examine the decision making process and relevant events found to be vitiated by *mala fides* or unreasonableness or arbitrariness. To the same effect, there is a decision reported in ***UNION OF INDIA Vs. LAKSHMI BUILDERS*** wherein it is held as follows:

> *"It is very well settled and needs no reiteration at our hands that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouratism."*

At the same time, this Court does not exercise any appellate jurisdiction over the decisions taken by the Government bodies in the matter of awarding contract.

The learned counsel for the petitioner placed a strong reliance on the decision reported in ***RAMANA DAYARAM SHETTY Vs. INTERNATIONAL AIRPORT AUTHORITY OF INDIA*** wherein it is held to the following effect:

> *"In the course of conferment of largesse, entering into contracts, the State and instrumentalities of the State shall act fairly without traces of caprice."*

In another decision reported in ***ASSOCIATION OF REGISTRATION***

***PLATES Vs. UNION OF INDIA*** it is observed thus:

> *"Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. All that he can claim is that in competing for the contract, he should not be unfair treated and discriminated, to the detriment of public interest. Undisputedly, the legal position which has been firmly established from various decisions of this Court, cited at the Bar is that government contracts are highly valuable assets and the Court should be prepared to enforce standards of fairness on the Government in its dealings with tenderers and contractors."*

Now, it has to be seen that whether the case of the petitioner has been discriminated or the petitioner has been unfairly treated. One of the terms and conditions in the Tender Notification is that the Corporation does not necessarily bind itself to accept the lowest or any other Tender for the whole or part of the requirements mentioned in the tender notice. The decision of the Corporation in deciding the successful tenderers is final and no reasons will be assigned for rejection of tenders.

Therefore, from the above clause, it is clear that the Corporation is at liberty not to accept the lowest quoted tender. It is the case of the respondents that only the first 15 lowest quoted tenderers have been called for negotiations. In deciding a particular number in calling the tenderers for negotiations, it is for the Corporation to take appropriate decision. If it is a case of pick and choose method among the tenderers, then there will not be any difficulty in holding that the decision of the respondents is unfair and discriminatory. If the respondents-Corporation has chosen to limit a particular number of tenderers, who have quoted lowest price, it cannot be said that it is an arbitrary exercise of power so as to eliminate others. Since the respondents have received 71 tenders in all not only from the State of Andhra Pradesh, but also from outside the State, the Negotiation

Committee, constituted by the Chairman and Managing Director seems to have taken a decision to call the first 15 lowest quoted firms for negotiations. Such exercise of power cannot be said to be arbitrary in view of the fact that a large number of bidders have participated in the tender. No *mala fides* are attributed to the Negotiation Committee to the effect that with a view to favouring some of the firms, the Negotiation Committee acted arbitrarily and unfairly in calling a particular number of firms for negotiations. It is not the case of the petitioner that the firms have been called for negotiations by way of pick and chose method and at the will and pleasure of the respondents-Corporation. Since it is a specific case of the respondents that the first 15 lowest quoted tenderers have been called for negotiations, the question of favouritism does not arise. It is also not the case of the petitioner that he is one of the first 15 lowest quoted tenderers and therefore, his case was discriminated. Though it is stated in the counter affidavit that the petitioner failed to fulfil his promise in pursuance of the supply order on earlier occasion, the same cannot be a ground to reject his case. Since the petitioner does not come within the list of the first 15 lowest quoted tenderers, the action of the respondents-Corporation cannot be said to be unfair towards the petitioner.

One of the challenges made in this writ petition is with regard to the condition No.1 of the Tender Notification which reads as follows:

> *"Those who are in regular line of fabrication of Luxury and express bus bodies and have requisite infrastructure facilities to fabricate Hi-Tech buses i.e. 7 tank hot phosphating, Stretch paneling jig, paint booth, MIG welding etc., only should quote against the Tender."*

According to the petitioner, in imposing such restriction, there is no reasonable nexus with the object sought to be achieved. On the other hand, it is the case of the respondents that such condition postulates to have factors to fabricate Express and Luxury buses as the bodies of Express and Luxury buses are of aluminum top and the

Hi-tech buses are of M.S. type. The petitioner has not demonstrated how that condition is irrelevant or that there is no nexus with the object sought to be achieved in imposing such a condition. According to the respondents, the said provision offers a fair chance to all firms which have infrastructure facilities to fabricate other Luxury and Express bus bodies or Hi-tech bus bodies. Therefore, it is for the expert committee to take a decision with regard to the fabrication of the Luxury and Express bus bodies.

Therefore, in my considered opinion, condition No.1 of the tender notification, will not in any manner affect the right of the petitioner since it applies to all the tenderers who have offered their bids and as such there is no discrimination. Clause (1) of the Tender Notification is formulated by the respondents-Corporation to enable the capability of a particular tenderer who is in the regular line of fabrication of Luxury and Express bus bodies. Since it is not a case of unfairly treatment or discrimination, the writ petitioner is not entitled to any relief.

Viewed from any angle, the writ petition deserves to be dismissed.

In the result, the writ petition is dismissed. In the circumstances of the case, there shall be no order as to costs.

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(K.C. BHANU, J.)

25th March, 2005

bcj

Note: Issue copy in two days

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To

1 The Managing Director & Vice Chairman, Andhra Pradesh State Road Transport Corporation (APSRTC), Hyderabad.
2 The Chief Mechanical Engineer ( C&B), A.P. State Road Transport Corporation, Head Office Building, Near RTC Cross Roads, Musheerabad, Hyderabad - 500 020.

3 Two C.D copies